

# United States Senate

WASHINGTON, DC 20510-4502

August 17, 2018

Donald F. McGahn, White House Counsel  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. McGahn,

The Senate Judiciary Committee, on which I served as the chairman or ranking member for 20 years, has a long tradition of thoroughly vetting the records of nominees to our nation's highest court. The longstanding, bipartisan expectation has been that any materials produced while a nominee was a public servant that could shed light on his or her views, thinking, or temperament, that are not privileged, should be subject to public scrutiny and carefully considered by the Senate prior to confirmation.

It is not surprising then, that on July 19, 2018, while discussing preparations for Judge Kavanaugh's confirmation hearing, Senator Cornyn — the Majority Whip and a senior member of the Judiciary Committee — said that the production of documents Judge Kavanaugh had "generated . . . authored...or contributed to" during his tenure as White House Staff Secretary should be produced to the Committee. He stated that it "just seems to be common sense."

However, less than a week later, following a White House meeting with you on the records production on July 24, the Republican position abruptly and inexplicably shifted. Since that meeting, Senate Republicans refused to request any and all documents from Judge Kavanaugh's three years as White House Staff Secretary, regardless of authorship. Immediately after the meeting, Senator Cornyn described requesting any Staff Secretary records as "a bridge too far." Days later, Chairman Chuck Grassley submitted a records request to the National Archives and Records Administration (NARA) and omitted all of Judge Kavanaugh's records as Staff Secretary.

The American people deserve to know what changed during this pivotal, Republican-only meeting on July 24.

In the 44 years I have served in the Senate, I have seen 19 nominations to the Supreme Court, including the nomination of every current member of the Court. I have never before seen the White House, under either a Republican or Democratic President, usurp or direct the parameters of the Judiciary Committee's document request regarding a Supreme Court nominee.

Judge Kavanaugh said that his "five and a half years in the White House — and especially [his] three years as Staff Secretary for President Bush — were the most interesting and in many ways among the most instructive." The importance of documents related to this time in Judge Kavanaugh's career is self-evident. I find it troubling that the White House and Judiciary Committee Republicans are stifling transparency rather than working together to provide the necessary documents for the Senate to do its

work. The American people deserve the unvarnished truth about Judge Kavanaugh, just as Senate Republicans rightly demanded of President Obama's nominees.

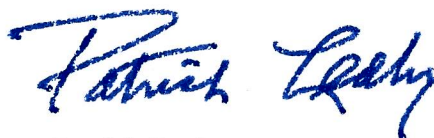
Transparency weighs here in favor of disclosure. The documents from Judge Kavanaugh's time in the White House belong to the American people. We, as their representatives, should be working together in a transparent way to produce these documents. The American people have the right to know the full record of the man President Trump has nominated to fill the most important Supreme Court vacancy in a generation.

Chairman Grassley has stated that he intends to begin Judge Kavanaugh's confirmation hearing on September 4, 2018. Accordingly, please provide answers to the following questions by August 29, 2018.

1. Who was present during the July 24, 2018 meeting? Was President George W. Bush's personal attorney, Bill Burck, either present at the meeting or consulted about it?
2. Senator Cornyn said that you informed the senators about what a "reasonable, relevant document production would look like." I can assure you that members of the Senate not present at the private meeting would similarly like to know: Why would a reasonable, relevant production not include any records, even those authored by Judge Kavanaugh, during his three formative years as White House Staff Secretary?
3. Have you had any discussions with Judge Kavanaugh, Bill Burck or another representative of President George W. Bush, or any representative of NARA, regarding what specific issues or materials are included in the approximately 3 million pages NARA has identified as Judge Kavanaugh's Staff Secretary records?
4. Have you personally seen any of the records referenced in question 3?
5. If the answer to either question 3 or 4 is yes, do you have reason to believe any of the records relate to:
  - a. The legal justifications or policies relating to the treatment of detainees?
  - b. The rules governing the detention of combatants?
  - c. The warrantless wiretapping of Americans?
  - d. A proposed constitutional amendment to define marriage as a union between one man and one woman?
6. At the July 24 meeting, did you or other White House staff share information about specific documents or topics from Judge Kavanaugh's time as Staff Secretary that could be seen as controversial or problematic for his confirmation?
7. Given the bipartisan tradition of the chairman and ranking member of the Judiciary Committee submitting a joint records request, why were no Democrats invited to the July 24 meeting?

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Patrick Leahy". The signature is stylized with a large, sweeping "P" and a cursive "Leahy".

Patrick Leahy  
United States Senator